

**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of

Milk In The Central

Marketing Area

:

: Docket Nos.:

: AO-313-A44 et al;

: DA-01-07

:

Statement Regarding Proposal 7

**Elvin Hollon
Dairy Farmers of America, Inc.**

**November 14, 2001
Kansas City, Missouri**

Ex 11

Statement on Proposal 7

The Case for Milk from States With No Counties in the Marketing Area

Exhibit 5, Table 11 titled - **Central Federal Milk Order Number of Producers & Pounds of Milk Pooled by State – 2000 and 2001** furnished by the Market Administrator, illustrates the volume of distant milk that is pooling on Order 32. Table 12 a map of this data, also produced by the Market Administrator, graphically details the information. Data provided by handlers on the sources of pooled milk, as required by each Federal Order, is the source data for this map. It shows the Order Marketing area and the sources of milk pooled on the Order. In an earlier statement, specific mileage and economic return data was presented to demonstrate that this milk could not serve the market regularly and generate a positive return.

We have demonstrated that the evidence presented by Federal Order Reform clearly shows that milk from these areas was specifically excluded from the marketing area and never intended to be a part of the Order 32 pool. Evidence about marketing area, blend price calculation and the underlying logic of the models that generated the Orders pricing surface support our contention and will not be detailed here again.

The proponents of proposal 8 share the same concern that we do – that milk is sharing in the Federal Order 32 blend price but does not perform for the market in a reasonable manner.

We would propose that specific Order language be adopted to define the performance requirements for milk located outside of the marketing area. In general our proposal would be patterned after language that exists currently in Federal Order 1 and existed in Federal Order 2 for many years prior to Order Reform. That language states that milk from specific geographic areas be grouped together in individual state units by individual handler and then each individual unit must meet the prevailing performance standard exacted on in area milk.

Before we spell out the specifics of our language however, we would like to detail why we propose that certain Minnesota and Wisconsin counties must also be treated with this same standard.

The Case of Minnesota and Wisconsin Supplies to Order 32

The Market Administrator Exhibit 7 requested by Hollon shows specific information about the milk pooled on Order 32 from Minnesota and Wisconsin in December of 1996, 1998 and 2000. These periods were requested to show the extent of milk pooled on Order 32 (as designated by its current boundaries and as if the current boundaries, which contain predecessor Orders, had been in effect then) and that presently associated with the Order thru the "open pooling" schemes that are currently in use.

The map shows only a few "blue" areas in 1998 – that is only a few Minnesota and Wisconsin counties, not located in the marketing area, **with milk pooled** on Order 32. In December 2000 in either state, there were only a few counties that **did not pool** any milk in Order 32 – a remarkable change! Many of those counties with no milk pooled on Order 32 have no milk production at all.

The accompanying table provides numerical details for the map. In December 1998 - 14 Wisconsin out of area counties pooled 38,820,767 pounds of milk on Order 32. By December 2000 the county count was 66 and the volume at 394,747,229 - **up 917%**. For Minnesota there were 23 counties supplying 37,259,609 pounds of milk in 1998. By December 2000 the county count was 67 and the volume 146,003,098 for a **292% increase**. The sum 540,750,327 pounds exceeded the total Class I and II pounds in the Order in December 2000.

The calculations presented earlier noted that milk from these areas did provide a positive return but not likely enough to pay the procurement costs or bid it away from a manufacturing plant. So why would it become attracted to Order 32 – because it could easily associate – minimally perform and still collect from the blend pool. The combination of easy market association and lax pooling requirements made the opportunity to easy to pass up.

Furthermore, while we can easily support the concept that in area shipments be used to qualify milk produced in the marketing area, it is more difficult to define how in area shipments should be used to qualify out of area milk supplies. Without our proposal it will become too easy for in area milk production and sales to provide qualification for milk supplies produced out of the marketing area. Since these supplies are in such close proximity we think the provisions governing them need additional specification. Thus we would propose that certain counties in Minnesota and Wisconsin also be subject to the same type of qualification standard as milk from more distant areas such as California or New Mexico.

Exhibit 12 Table 1 – A & B titled – **Minnesota (and Wisconsin) Counties that pooled Milk on Order 32 and It's Predecessor Orders That Are Not In the Marketing Area December 1998 and December 2000** outline our approach. The

question succinctly is what **out of area counties should be afforded the qualification privilege of being associated with in area milk** and **what counties should be held to a more stringent standard**. We would propose that milk from counties associated with the market in 1998 and that had a supply volume in excess of one 50,000 pound load per day be included with the in area standard. All other counties would be included with the out of area standard. The historical link to the prior period with a recognizable and substantial marketable volume seems to be a reasonable and justifiable standard.

For Minnesota counties Table 1-A shows that 37 million pounds of milk shipped from counties that had any association in 1998. This volume grew to 146 million in 2000. Application of our standard would reduce this volume to 52 million.

For Wisconsin counties Table 1 – B shows that 39 million pounds of milk shipped from counties that had any association in 1998. This volume grew to 395 million in 2000. Application of our standard would reduce this volume to 66 million.

Note that any volume could still qualify to share in the Order 32 pool but would have to meet the out of area performance standard.

While we share the same view with proponents of Proposals 8 that there is an issue of concern due to the open pooling provisions allowing milk distant from the market to pool without performing, we differ in how to correct the problem.

The solutions they propose are insufficient in several areas:

- 1) Proposal 8 does not recognize the primacy of a marketing area nor does it address the concerns of a performance standard. We feel that any proposal must incorporate these fundamentals. The setting of an arbitrary standard that cannot be measured with an economic ruler is not the right way to go and may suffer from future legal challenge.

- 2) Proposal 8 does not address the total universe of the potential supply that can attach itself to the market but never serve the market. In this specific case milk from Idaho, Minnesota, Wisconsin, or New Mexico for example would not be affected in any way by the proposed relief but could likely still pool with minimal performance.

- 3) Proposal 8 may result in unforeseen negative consequences between milk pooled in Federal Orders and milk pooled in State Orders. There are State Milk Marketing Orders in California, Nevada, North Dakota, Montana, Virginia, Pennsylvania, New York and Maine. There have been proposals in recent years in Texas, Kansas and Nebraska and occasionally even in Wisconsin for State Orders to be promulgated. The interface between Federal Orders and the existing State

Orders is difficult to determine and impossible with potential future State Orders. In fact I participated in discussions last week with a state trade association of dairy farmers seeking input on the establishment of a new state order. We see no reason to seek a solution that may incur future trouble when better solutions are available.

4) Proposal 8 may result in unforeseen negative consequences between milk pooled in Federal Orders and milk pooled in Compacts. While currently the existence of Compacts is threatened we suspect that they are not dead. There is even talk of a National Compact that would include the Upper Midwest. We see no reason to seek a solution that may incur future trouble when better solutions are easily available.

5) Proposal 8 requires an additional audit burden and the authority to collect that information may not be available. To our knowledge, the California State officials are under no requirement to furnish data for audit to the Federal Order System.

6) Enactment of Proposal 8 would only migrate the problem to other Order areas. A more uniform application to all Orders that would solve or alleviate greatly this concern is a superior choice.

With regard to our Proposal 7 we note:

1) The concept is already in place in Federal Order 1001 (Northeast Order) and was in place in Federal Order 1002 prior to Reform. So it has already stood the test of time.

2) It recognizes the principles of both a marketing area and the performance aspect of market wide pooling.

3) It has already been proposed for use in Federal Order 30 and its continued use would be consistent here.

3) It carries little additional record-keeping or audit burden.

4) It has a measurable economic consequence that is in line with existing Order principles that if the economics are positive regulation does not prohibit pooling. Yet it provides a reasonable and justifiable hurdle for distant milk to overcome. The provision that each state must be treated individually and perform as a stand alone entity under the same 20% or 25% performance as any other in area milk supply, provides a reasonable economic test of whether or not the return will justify the performance. The economic return must be earned in the market place and not on the pooling report. As shown in Exhibit 7

Tables 10 - 15 at the 20% or 25% shipping level and the same PPD and delivery cost there are months of negative returns and some months of positive ones thus raising the hurdle of economic risk. By requiring performance similar to other local milk supplies the intangibles of rejected loads, bad weather and a variable demand from bottlers causes the return to be less dependable and the risk greater. This however causes the decision making process faced by the distant supplier to be more like that faced by local milk supplies.

5) The individual state unit concept is an adequate and reasonable safeguard for Order 32. Furthermore the requiring each state unit to perform individually prevents in area milk from qualifying distant milk. It also discourages distant milk from seeking a large supply block from a nearby state and forming a unit to ease the performance requirement. We find schemes similar to this occurring in other Federal Orders and they disrupt orderly marketing practices there. We wish to avoid their spread.

6) We find many examples of geographic distinction in current Order provisions. Currently Order 32 and Order 30 supply plants units must be composed of plants in the marketing area. Transportation credits paid in Federal Orders 5 and 7 must be from milk originating outside of the marketing area. In the former Texas Order market, balancing credits could be paid only on milk produced in certain counties. In the former Michigan Order "direct delivery" differentials were paid only on shipments to bottlers located in specified counties. In this proceeding we are proposing a higher performance standard for supply plant units – and they must be composed of plants located in the marketing area.

Thus our proposed language would read:

§ 1032.7 Pool Plant

* * * * *

(c) * * *

(4) If milk is delivered to a plant physically located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, South Dakota and the Minnesota counties of Fillmore, Houston, Lincoln, Mower, Murray, Nobles, Olmstead, Pipestone, Rock, and Winona and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland and Vernon by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1032.30.

(ii) At least the required minimum percentage specified in § 1032.7(c) of the producer milk of each unit of the handler shall be delivered to plants described in § 1032.7(a), (b) or (e), and such deliveries shall not be used by the

handler in meeting the minimum shipping percentages required pursuant to § 1032.7(f); and

(iii) The percentages of 1032.7(c)(4) are subject to any adjustments that may be made pursuant to § 1032.7(g).

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§ 1032.13 Producer Milk

Subject to the conditions of paragraph (e) of this section, "producer milk" means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(e) Milk receipts from producers whose farms that are physically located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, South Dakota and the Minnesota counties of Fillmore, Houston, Lincoln, Mower, Murray, Nobles, Olmstead, Pipestone, Rock, and Winona and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland and Vernon such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(1) Each unit shall be reported separately pursuant to § 1032.30.

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1032.7(c), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1032.13(d)(2); and

(3) The percentages of § 1032.13(d)(2) are subject to any adjustments that may be made pursuant to § 1032.13(d)(5).